80-1060

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No.

BRADDOCK EUGENE TAYLOR
Petitioner,

versus

THE STATE OF TEXAS
Respondent,

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS

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QUESTION PRESENTED FOR REVIEW

Whether the highest Court of the State of Texas, by admitting into evidence a confession, obtained in violation of the Fourth Amendment to the United States Constitution, has decided a federal question of substance in a way not in accord with the applicable decisions of this Court, to-wit; Brown v Illinois, 422 U.S. 590,45 L.Ed. 416, 95 S.Ct. 2254 and Dunaway v New York, 422 U.S. 200, 60 L.Ed.2d 824, 99 S.Ct. 2248

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THE STATE OF TEXAS
Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

Braddock Eugene Taylor, Petitioner, prays that a writ of certiorari issue to review the judgment of the Court of Criminal Appeals of the State of Texas entered in this case on September 10, 1980

OPINION BELOW

The opinion of the Court of Criminal Appeals below (Appendix, infra,p.1-4) is reported in SW2d .

JURISDICTION

The judgment of the Court below (Appendix, infra,p.1-4) was entered on September 10, 1980. Rehearing was denied on October 15,1980 (Appendix, infra, p.5) The Court of Criminal Appeals is the Court of last resort in the State of Texas for criminal matters, and this petition has been filed with the clerk within ninety

days after the entry of such judgment. Jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTION PRESENTED FOR REVIEW

Whether the highest Court of the State of Texas has decided a federal question of substance; ie, the Fourth Amendment to the United States Constitution, in a way not in accord with the applicable decisions of this Court; ie, Brown v Illinois, 422 U.S. 590, 45 L.Ed.2d 416, 95 S.Ct. 2254 and Dunaway v New York, 442 U.S. 200, 60 L.Ed.2d 824, 99 S.Ct. 2248

CONSTITUTIONAL PROVISIONS INVOLVED

Fourth Amendment of the United States Constitution; "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF THE CASE

On May 21, 1979, the police found a body at 327 Palmero, Corpus Christi, Texas. The body was that of Carl Thomas Madely and it was obvious that he had been stabbed to death.

The police originally went to that address as a result of a phone call that "the back door was open and a body would be found". The caller did not identify himself initially but he called back later, and after identifying himself as the man who made the prior call, went on to tell Officer Escobedo that he had learned this information from one of his employees (the

appellant). The employer stated the the Appellant had come to his office explaining that "he needed to talk to someone, that he had found the body of the victim". (R.p.64,l.15-22 & R.p.17, 1.10-25) Based upon this information and this information only (R.p. 65, 1. 4-7) the police drove to the business office and interviewed the Appellant.

When they first questioned the Appellant, he admitted that he had found the body (R.p.65,1.11-13) but denied committing or being involved in the murder. (R.p.65, 1. 13-15) However, because he was somewhat confused as to when and where he had last seen the victim alive (R.p. 19,1. 6-24) he was warned of his rights and brought to the police station for further interrogation. (R.p.18, 1. 20-23) Finally, after agreeing to take a polygraph he was booked into the city jail as a "material witness" and held overnight without bond. (R.p. 71, 1. 13-17 & R.p. 33,1. 1-2) The next afternoon, after more conversations and warnings, the Appellant was given the polygraph. It was then after being confronted with the results of that test and another hour and a half of interrogation that the Appellant conceded his guilt and the Confession was obtained. (R.p. 24, & R.p. 67, see also States's Exhibit No. 1)

Although there is some confussion as to whether the Appellant was given a Miranda warning by a magistrate before the statement was taken, (R.p. 70-71) he was warned in compliance with Miranda by the police officers.

On September 4, 1979, the Appellant's case was first called in the 148th District Court of Nueces County by the Honorable Judge Noah Kennedy, the Appellant had already filed a written motion to suppress the confession and it was at this time that

the Court was informed that there was a Fourth Amendment question. (R.p. 2,l. 3-8)

After conducting a Jackson v Denno hearing the Trial Court found that "the confession was freely and voluntarily given after all the warnings that were required by law were made.....and there was probable cause," for the arrest. (R.p. 96,l. 24-25; p. 97, l 1&6)

The Appellant then waived a jury trial and plead Nolo Contendere in order to preserve this one point for appeal. That appeal was duly filed and oral argument was heard on July 10, 1980, and the Appellant's contention was overruled on September 10, 1980 and on October 15, 1980 the Motion for Rehearing was denied. This then is as far as the Appellant can appeal in the State of Texas. He has no further relief or adequate remedies at law.

REASON FOR GRANTING THE WRIT

Briefly the Appellant is taking the position that the facts in his case cannot be substantially distinguished from those in Brown v Illinois 422 U.S. 590, 45 L.Ed.2d 416, 95 S.Ct. 2254, nor from Dunaway v New York 442 U.S.200, 60 L.Ed.2d 824, 99 S.Ct. 2248.

The facts complained of are these; the Appellant is a mentally unstable person who was arrested without probable cause held in jail without bond and continuously interrogated until he confessed.

Although the Appellant is not availing himself of the defense of insanity, still his mental condition at the time of his arrest is such that it should be considered because it not

only lessens the issue of the adequacy of the warnings but more importantly, because it tends to negate the probable cause.

From the initial interview, Officer Escobedo noticed that the Appellant's behavior was "sort of erratic." (R.p. 59, l. 19-20) It was a personality type that the police officer, herself, had never run into before. When she asked a question he would jump from subject to subject. In fact, he would go off on so many different tangents, skipping between his childhood experiences and his personal views on religion, that the officer had to really pay attention to evaluate his response. (R.p. 60-62) This distortion was so pronounced that she notified her superiors and after a brief observation, they decided to take him to a psychiatrist, something not normally done by the police. (R.p. 74, l. 1-4) While the concern in a case involving a defendant of subnormal intelligence is normally one of suggestibility, see Simms v Georgia, 389 U.S. 404, 88 S.Ct. 523, 19 L.Ed2d 634 (1967); Culombe v Connecticut, 367 U.S. 568, 81 S.Ct. 1860, 6 L.Ed.2d 1037 (1961) this peculiarity is presented here, primarily, because the police are using this response to support their probable cause for the arrest.

Under the government's theory, the evasive answers arroused the suspicions of the officers; that is, they concluded that because he was unsure of times, places, and things, that he was lying to cover his guilt. While that may be a good syllogism to become "suspicious" during the

initial contact with a rational person, it loses its logic in the present case when one considers the fact that the police interpreted this same confusion as a symptom of some form of mental abnormality. Although this may not be a perfect paradox and a person may evidence signs of both lunacy and guilt, still it tends to throw a question mark on the validity of the subjective conclusions supporting the arrest.

Furthermore, this Court has held that vagueness or even lies does not raise a presumption of guilt, as was shown in Brown v Illinois; Tr. 74.

> "During the 20 minute drive Nolan (police officer) again asked Brown, who was sitting with him in the back seat of the car, whether his name was Richard Brown and whether he owned a 1966 Oldsmobile. Brown alternately evaded these questions or answered then falsely."

In Brown, this Court said, that the impropriety of the arrest was obvious, and that awareness of that fact was virtually conceded by the two officers when they repeatly acknowledged that the purpose of their action was "for investigation" or for "questioning."

In this case, the officers acknowledge that the purpose of their action was "to interview him further as to what his knowledge was." (R.p. 65, 1.21)

In both cases no arrest warrant was gotten (R.p. 78, 1. 13-15) but more of an admission of the lack of probable cause exist here, because the Appellant is not booked for murder but rather is booked as a "material witness!" (R.p. 73, 1.

9-16 & p. 71, l. 9-17)

The arrest in the present case, like the arrest in Brown was investigatory, both in design and execution, and the illegality of the arrest here, like Brown, had a purposefulness, ie, the label of "material witness" attached to the arrest,enabled the officers to hold the Appellant, on only their authority, to deny him bail and to lock him up overnight until they could obtain a polyograph. (R.p. 73, l. 15-18; see also p. 40, l. 2-4 & p. 72-73)

And their gambet was successfully, for the next day after confronting the Appellant with the results of the polyograph and another hour and a half of interrogation they finally obtained an admission of guilt. The dialect was reduced to writing, was signed by the Appellant and was later marked and introduced as States exhibit 1. This one exhibit was the only evidence ever uncovered connecting the Appellant to the homocide.

Although it is conceded that the Appellant was warned according to the dictates of Miranda on several occasions, (it is interesting to note that he was warned just before each interrogation began and thus the number of warnings also indicate the number of interrogations) as this Court has said, the Miranda warnings in no way inform a person of his Fourth Amendment rights, including his right to be released from unlawful custody following an arrest made without a warrant or without probable cause. Brown v Illinois, supra. In fact, not only was the Appellant not told that he could

be released, the only valid assumption he could make in this case was that regardless of how long he stuck to his innocent story of merely finding the body, the police had the right to hold him and quesion him until he either convinced them of his innocence or he confessed his guilt. The only restriction being that they had to read him his rights from a 3 X 5 Miranda card.

The right to remain silent etc, must sound a little absurd to a person whose liberty has snatched away merely because the police disbelieve his story.

CONCLUSION

The judgement below is a contradiction of the decisions, of this Court, that the Fourth Amendment was meant to prevent the wholesale intrusion upon the personal security of our citizenry, whether these intrusions be termed "arrests" or investigatory detentions."

The decision below permits a literal compliance with the Fifth Amendment to act as a complete cure to the exploitation of the Fourth.

Respectfully Submitted

James Folsom
Attorney for Petitioner
412 Wilson Tower
Corpus Christi, Texas
(512) 884-6697

CERTIFICATE OF SERVICE

I, James Folsom, hereby certify that three true and correct copies of the foregoing Petition for Writ of Certiorari to the Court of Criminal Appeals for the State of Texas has been mailed by depositing the same in a United States mail box, with first class postage prepaid,addressed to the District Attorneys Office of Nueces County at his post office address of 901 Leopard, Corpus Christi, Texas 78401, on this the 15 day of November, 1980.

James Folsom

BRADDOCK EUGENE TAYLOR, Appellant

NO. 64,591 v. - - - Appeal from NUECES County

THE STATE OF TEXAS, Appellee

O P I N I O N

Appeal is taken from a conviction for murder. Appellant was convicted in a trial before the court following his plea of nolo contendere. Punishment was assessed at 25 years.

In his sole ground of error, appellant contends that the court erred in admitting his written statement into evidence. The only evidence introduced at trial which showed the guilt of appellant was the written statement he now complains of on appeal. He maintains that the statement was the result of exploitation of an unlawful arrest.

Appellant filed a motion to suppress the statement and the court held a hearing thereon in compliance with Jackson v. Denno, 378 U.S. 368 (1968) and Art. 38.22, V.A.C.C.P. At the conclusion of the hearing, the court found that the statement was freely and voluntarily given and not the result of an unlawful arrest.

Officer V. B. Alvarado, of the Corpus Christi Police Department, testified that on May 21, 1979, a telephone caller reported that a body could be found in a house on Palermo Street. Officers were dispatched to the house and found the body of Carl Madely. The victim had been stabbed approximately 19 times and the body was in the early stages of decomposition. The following day, the person who had previously made the call, called authorities again and identified himself as Cliff Pittcher.

Pittcher was appellant's employer at Win-Way Industries. Pittcher had reported the location of the body after having been informed of same by appellant.

Alvarado and Officer Olivia Escobedo then went to appellant's place of employment to discuss what appellant knew of the victim's death. In his version of the events leading up to the discovery of the victim's body, Alvarado and Escobedo noticed several conflicts in appellant's story. Appellant was then given his Miranda warnings and taken in for further questioning.

The officers and appellant arrived at the police station at approximately 5:00 p.m. on May 22. Appellant was once again given his warnings after agreeing to take a polygraph test the next day. Appellant was then booked into the city jail as a "material witness" and held overnight.

The following day, Alvarado gave appellant his warnings both before and after the polygraph examination. At 11:30 a.m. appellant signed the written statement which stated that he had killed the victim. Before he signed the statement, Alvarado read the warnings printed at the top portion of the statement to appellant on three different occasions. Alvarado stated that each time appellant was informed of his rights, he acknowledged that he understood what the officer was talking about. Alvarado further related that no force, threats or promises were employed in order to obtain the written statement.

Officer Escobedo related that she and Officer Paul Rivera witnessed appellant sign the statement. Immediately prior to his signing, appellant was once again given his warnings. Escobedo did not arrest appellant for the murder of Madely until after the statement had been signed.

It is appellant's contention that at the time he was taken into custody at his place of employment the authorities did not have

probable cause for his arrest. He argues that being held in custody overnight as a "material witness" was unlawful and that his statement was a direct result of the alleged unlawful arrest and custody.

We recently addressed a similar contention in Alonzo v. State, 591 S.W.2d 842. In that case, although the defendant's arrest was improper, his statement was nevertheless found to be admissible. It was noted that following his arrest, the defendant had been given his warnings four times and that he had not been mistreated during his time in custody. In Alonzo, the Court further noted:

> "Although appellant's arrest pursuant to the complaint and arrest warrant was unlawful, that does not necessarily mean that the confession was inadmissible. If it is shown that the confession is voluntary and sufficiently an act of free will to purge the primary taint of the unlawful arrest, the confession is admissible. Brown v. Illinois, 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975).
>
> "The question whether a confession is the product of a free will under Wong Sun must be answered on the facts of each case. No single fact is dispositive. The workings of the human mind are too complex, and the possibilities of misconduct too diverse, to permit protection of the Fourth Amendment to turn on such a talismanic test. The Miranda warnings are an important factor, to be sure, in determining whether the confession is obtained by exploitation of an illegal arrest. But they are not the only factor to be considered. The temporal proximity of the arrest and the confession, the presence of intervening circumstances, see Johnson v. Louisiana, 406 U.S. 356, 365, 92 S.Ct. 1620, 32 L.Ed.2d 152 (1972), and particularly, the purpose and flagrancy of the official misconduct are all relevant. [Footnote ommitted.]
>
> "Id., 422 U.S. at 603-604, 95 S.Ct. at 2261.
>
> "This Court has often held that a confession otherwise shown to be voluntary is not rendered inadmissible because the accused was under arrest or in custody at that time, even though the arrest may have been under invalid process or without legal right. See Morgan v. State, 516 S.W.2d 188 (Tex.Crim.App. 1974); Chase v. State, 508 S.W.2d 605 (Tex.Crim.App. 1974); Lacefield v. State, 412 S.W.2d 906 (Tex.Crim.App. 1967)." (Alonzo v. State, supra at 847.)

Assuming appellant's initial arrest and continued custody as a "material witness" was improper, we nevertheless find that the trial court did not err in finding his statement to be admissible.

Appellant was given his warnings at least eight times before finally signing the statement. He acknowledged that he understood these warnings and was willing to talk to officers. There is uncontroverted evidence that he was well treated by authorities before giving the statement. There is no indication that he was questioned during the night that he was held as a "material witness." He gave the confession freely and voluntarily. We find that appellant's statement was not the result of an exploitation of the alleged unlawful arrest and custody.

The judgment is affirmed.

PER CURIAM

(Delivered September 10, 1980)

By: Panel 3, 3rd Quarter, 1980, composed of:

Truman Roberts, Judge
Tom G. Davis, Judge
W. C. Davis, Judge

Roberts, J., concurs in results

COURT OF CRIMINAL APPEALS OF TEXAS
CLERK'S OFFICE

Austin, Texas, OCT 15 1980

Dear Sir:

I have been instructed to advise that the Court has this day denied "Leave To File" the Appellant's Motion for Rehearing in Cause No. 64,591, Braddock Eugene Taylor

vs.

THE STATE OF TEXAS Appellee.

Sincerely yours, THOMAS LOWE
[redacted], Clerk

NO. 80-1060

MAR 27 1981
ALEXANDER L. STEV
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

BRADDOCK EUGENE TAYLOR,
Petitioner

V.

THE STATE OF TEXAS
Respondent

On Petition For Writ of Certiorari
To The Texas Court of Criminal Appeals

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

I. Whether Petitioner's confession was improperly admitted at his Texas murder trial as the fruit of an unconstitutional arrest?

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NO. 80-1060

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BRADDOCK EUGENE TAYLOR,
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V.

THE STATE OF TEXAS,
Respondent

On Petition For Writ of Certiorari
To The Texas Court Of Criminal Appeals

RESPONDENT'S BRIEF IN OPPOSITION

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

NOW COMES the State of Texas, Respondent herein, by and through its attorney, the Attorney General of Texas, and in response to the petition for writ of certiorari submits this brief in opposition.

OPINION BELOW

Petitioner's conviction was affirmed by the Texas Court of Criminal Appeals on September 10, 1980, in an unpublished per curiam opinion (No. 64,591). The opinion is reproduced as the appendix to the petition for certiorari.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS

Petitioner's claim is based upon the Fourth Amendment to the United States Constitution.

STATEMENT OF THE CASE

Respondent is in substantial agreement with Petitioner's statement of the case. Petitioner omitted the fact, however, that the police officers asked an assistant district attorney if there was probable cause to arrest Petitioner. The arrest was accomplished only after the circumstances leading to it had been reviewed and approved by the district attorney.

SUMMARY OF ARGUMENT

There are no special and important reasons to consider the issue presented.

Petitioner is essentially asking for a review of the factual determinations of the Texas courts; therefore, this Court would not be justified in exercising its jurisdiction to grant the writ of certiorari.

Petitioner has failed to prove that his arrest was illegal, but assuming, arguendo, that it was, the facts reveal that Petitioner decided to confess as an act of free will which was unaffected by the alleged illegality of the arrest.

ARGUMENT

I.

THE QUESTION PRESENTED FOR REVIEW IS UNWORTHY OF THIS COURT'S ATTENTION

Rule 17 of the Rules of theSupreme Court provides that review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons

therefor. Petitioner has advanced no special or important reasons in this case, and none exists.

II.

WHETHER PETITIONER WILLINGLY MADE HIS CONFESSION IS ESSENTIALY A FACTUAL QUESTION UNWORTHY OF THIS COURT'S ATTENTION.

In finding that the trial court correctly concluded that Petitioner's confession was voluntary, the Texas Court of Criminal Appeals determined:

> Appellant was given his warnings at least eight times before finally signing the statement. He acknowledged that he understood these warnings and was willing to talk to officers. There is uncontroverted evidence that he was well treated by authorities before giving the statement. There is no indication that he was questioned during the night that he was held as a 'material witness.' He gave the confession freely and voluntarily. We find that appellant's statement was not the result of an exploitation of the alleged unlawful arrest and custody.

Taylor v. State, (No. 64,591); writ of certiorari, appendix at 4. Petitioner's challenge to the Court of Criminal Appeals' conclusion that the confession was not the result of an unlawful arrest is primarily based upon Petitioner's disagreement with that court's factual determination.

Such a factual dispute does not justify an exercise of this Court's certiorari jurisdiction. The trial court and the Court of Criminal Appeals both found facts sufficient to support a finding of a proper confession. "A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to

review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." *Graver Mfg. Co. v. Linde Co.*, 336 U.S. 271, 275 (1949).

In *Tacon v. Arizona*, 410 U.S. 351 (1973), this Court granted certiorari to consider the constitutional limits of a state's authority to try in abstentia a person who had voluntarily left the state and who, for financial reasons, was unable to return to the state. The record demonstrated, however, that the issue had not been presented to the Arizona Supreme Court. In dismissing the case this Court observed, "The only related issue actually raised below is whether petitioner's conduct amounted to a knowing and intelligent waiver of his right to be present at trial. Since this is primarily a factual issue which does not, by itself, justify the exercise of our certiorari jurisdiction, the writ of certiorari is dismissed as improvidently granted." *Tacon v. Arizona*, 410 U.S. at 352. This reasoning is directly applicable to the present case; therefore, the writ of certiorari should not be granted.

III.

PETITIONER'S CONSTITUTIONAL RIGHTS WERE NOT VIOLATED WHEN HIS CONFESSION WAS ADMITTED INTO EVIDENCE.

Because of his reliance on *Brown v. Illinois*, 422 U.S. 590 (1975), and *Dunaway v. New York*, 442 U.S. 200 (1979), it appears that Petitioner is challenging the introduction of his confession into evidence because its introduction violates his Fourth Amendment rights, rather than his Fifth Amendment rights. For many reasons, Petitioner fails to establish such a violation.

Petitioner has failed to prove that his arrest was illegal. Although he characterizes the arrest as "investigatory" and relies heavily on the fact that he was booked into jail as a "material witness," (writ of

certiorari at 7), the testimony of the police officers at his *Jackson v. Denno* hearing establishes that the arrest may not have been investigatory. The fact that Petitioner knew the location of the deceased's body, that he was unwilling to tell the police details relating to the time he last saw the deceased and that many of his alibis were proved false may have been the basis of Officer Alvarado's belief that Petitioner was arrested for murder, rather than for investigatory purposes. Petitioner totally fails to address the question of the illegality of the arrest.

Assuming, arguendo, that the arrest was illegal, Petitioner has failed to establish that his confession was obtained by the exploitation of an illegal detention.

> The question whether a confession is the product of a free will ... must be answered on the facts of each case. No single fact is dispositive ... The Miranda warnings are an important factor, to be sure, in determining whether the confession is obtained by exploitation of an illegal arrest. But they are not the only factor to be considered. The temporal proximity of the arrest and the confession, the presence of intervening circumstances, and, particularly, the purpose and flagrancy of the official misconduct are all relevant. The voluntariness of the statement is a threshold requirement.

Brown v. Illinois, 422 U.S. at 603-04 (citations and footnotes omitted). *See, Dunaway v. New York*, 442 U.S. at 218; *Rawlings v. Kentucky*, *_U.S. at_*, *100 S.Ct. 2556, 2563 (1980).*

First, it is undisputed that Petitioner was continually advised of his Miranda rights throughout his dentention. Petitioner admits that he was frequently told of his rights, and he has never claimed that he did not understand them.

Second, *Brown* requires an inquiry as to the "temporal proximity of the arrest and the confession." Petitioner was taken into custody at approximatly 5:00 p.m. on May 22, 1979. Police officers spoke with him in an office at the police station and he was placed in the city jail overnight. The next morning Petitioner was taken to an office of the Department of Public Safety where he voluntarily submitted to a polygraph examination. Later he again spoke with a police officer and made his confession. Obviously, a great amount of time passed between the initial arrest and the confession.

Third, *Brown* requires a review of intervening circumstances which may have occurred between the initial detention and the confession. It appears that approximately sixteen hours elapsed between the initial detention and Petitioner's statements. During that time Petitioner slept; he probably ate two meals; he was driven to police offices, the city jail, a Department of Public Safety office and returned to police offices; and he took a polygraph examination.

Fourth, *Brown* requires a consideration of "the purpose and flagrancy of the official misconduct." To establish that the police acated improperly, Petitioner concludes that his arrest, like the arrest in *Brown*, was investigatory. Although the term "material witness" was used when Petitioner was booked into jail, other facts establish that the police were aware that Petitioner was an acatual murder suspect. Officer Alvarado believed that Petitioner was booked for murder. Officer Escobedo acknowledged that Petitioner was booked as a material witness, but a review of her entire testimony at the *Jackson v. Denno* hearing indicates that she, too; believed Petitioner committed murder. Further, the police officers took the precaution of contacting an assistant district attorney to be sure that there was probable cause to arrest Petitioner. Petitioner has never claimed that he

was abused in any manner by the police. His entire claim of official misconduct rests upon a conclusion that the arrest was illegal, a fact which he fails to establish.

Finally, *Brown* requires that the voluntariness of the confession be established. Petitioner has never claimed that his statement was involuntary. Although Petitioner alludes to the fact that the police officers believed he was acting in an erratic manner during his detention, he admits that "a person may evidence signs of both lunacy and guilt." Writ of certiorari at 6. Further, at the police officers' request, Petitioner was examined by a psychiatrist who concluded that he was sane.

An examination of the totality of the circumstances of this case reveals that Petitioner's arrest was legal and, further that this confession was an act of free will. *Rawlings v. Kentucky*, —U.S. at —, 100 S.Ct. 2564.

CONCLUSION

For the above reasons, Respondent respectfully prays that Petitioner's writ of certiorari be denied.

Respectfully submitted,

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